

E-002/AI-92-148 Order or Approval of Administrative Services Agreements Between Northern States Power Company and NRG Group, Inc., NRG Energy, Inc., NRG Thermal Corporation, NRG Resource Recovery, Inc., Graystone Corporation and Scoria, Incorporated and Tax Sharing Agreement Between Northern States Power Company and NRG Group, Inc.

ISSUE DATE: June 23, 199

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of Northern States
Power Company's Petition for
Declaratory Order or Approval of
Administrative Services
Agreements Between Northern
States Power Company and NRG
Group, Inc., NRG Energy, Inc.,
NRG Thermal Corporation, NRG
Resource Recovery, Inc.,
Graystone Corporation and
Scoria, Incorporated and Tax
Sharing Agreement Between
Northern States Power Company
and NRG Group, Inc.

ISSUE DATE: June 23, 1992

DOCKET NO. E-002/AI-92-148

ORDER APPROVING AFFILIATED
INTEREST CONTRACTS AND REQUIRING
RELATED ACTIONS

PROCEDURAL HISTORY

On February 26, 1992, Northern States Power Company (NSP) filed a petition for a Declaratory Order that Commission approval of 1) its tax sharing agreement with NRG Group, Inc. (the Group) and 2) its administrative services agreements with the Group and the Group's five subsidiaries (NRG Energy, Inc., NRG Thermal Corporation, NRG Resource Recovery, Inc., Graystone Corporation and Scoria, Incorporated) was not required. In the alternative, NSP sought Commission approval of these agreements.

On April 14, 1992, the Minnesota Department of Public Service (the Department) filed its comments on NSP's petition. The Department recommended that the Commission approve the Company's Agreements and, to ensure that future arrangements are in the public interest, direct NSP to (1) obtain pre-approval of any new contracts or amendments to existing contracts *with these companies*, (2) document its reasons for selecting a particular allocation factor when allocating indirect administrative and general expenses, and (3) maintain accurate monthly records of all resource exchanges between NSP and the NRG Group and its subsidiaries.

On April 15, 1992, Minnesota Power (MP) filed comments regarding NSP's filing. MP agreed with the Company that a utility's subsidiaries are not "affiliated interests" under Minn. Stat. §

216B.48 (1990), that Commission approval of the utility's agreements with subsidiaries is not required, and that the Commission should issue a Declaratory Order to that effect.

On June 9, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

Applicability of the Affiliated Interest Statute

Minnesota's "affiliated interest" statute states:

[N]o contract or arrangement for the exchange of any property, right, or thing, ...between a public utility and any affiliated interest...shall be valid or effective unless and until the contract or arrangement has received the written approval of the Commission.
Minn. Stat. § 216B.48, subd. 3 (1990).

On April 4, 1991, NSP executed a Tax Sharing Agreement with its wholly-owned subsidiary, NRG Group, Inc. (hereinafter the Group), and on January 1, 1992 NSP entered into Administrative Agreements with the Group and with each of the Group's five subsidiaries. These Agreements are contracts for the exchange of property or things, as described in the statute. Since NSP is a public utility, the only remaining question is whether the contracts in question are with an "affiliated interest" of that utility.¹

In its Petition for Declaratory Order, NSP argued that the affiliated interest statute did not apply to its contracts with the Group and the Group's five subsidiaries because these companies were not "affiliated interests" of NSP within the meaning of the statute. NSP contended that a subsidiary of a utility is not necessarily an "affiliated interest" of the utility within the meaning of the statute. NSP stated that the purpose of the statute was to protect ratepayers from undue influence that can occur when a public utility enters into contractual arrangements with affiliated entities which exercise control over the utility's decision-making process. According to NSP, the statute only applies where the utility enters arrangements with parties that exercise control over the utility.

The Commission disagrees with this interpretation of the statute. NSP ignored several of the categories of corporations that are defined as "affiliated interests" by the statute. In its

¹ The exclusion for contracts where the consideration is less than \$10,000 provided by Minn. Stat. § 216B.48, subd. 4 (1990) does not apply to any of these contracts.

analysis, NSP stated that the relevant categories were described in Subdivision 1, parts (a), (b) and (f) of the affiliated interest statute. Minn. Stat. § 216B.48, subd. 1 (1990). However, Subdivision 1 lists seven categories of corporations that constitute "affiliated interests."

The Commission finds that the category of "affiliated interest" applicable in this case is part (e) which confers "affiliated interest" status on

Every corporation operating...a servicing organization for furnishing supervisory, construction, engineering, accounting, legal and similar services to utilities, which has one or more officers...in common with the public utility.... Minn. Stat. § 216B.48, subd. 1 (e).

NRG Group, Inc. and its five subsidiaries are clearly "servicing organizations" within the meaning of the statute. The Company's Agreements contemplate the provision of listed services by NRG Group, Inc. to NSP.² The other requirement, a common officer between NSP and NRG Group, Inc., is also met. In its petition, NSP did not reveal that it shared a common officer with NRG Group, Inc. and each of its subsidiaries, but provided this information in response to a Department information request. Based on these findings, NRG Group, Inc. and each of its five subsidiaries is an "affiliated interest" of NSP as defined by Minn. Stat. § 216B.48, subd. 1 (e).

Accordingly, because the Agreements in question are between NSP (a public utility) and its statutory "affiliated interests," these Agreements must be approved in writing by the Commission before they become valid or effective.

Review of the Contracts Under the Affiliated Interest Statute

The affiliated interest statute provides:

....The Commission shall approve the contract or arrangement...only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest.....The burden

² NSP's Administrative Agreements with NRG Group, Inc. and each of its five subsidiaries indicate the activities anticipated from each party: "[T]he parties desire to enter into an agreement to provide for the rendering of and charging for certain services by each party to the other party,...." (Emphasis added.) And elsewhere, each agreement states: "[E]ach party will, at cost, render management, supervisory, construction, engineering, accounting, legal, financial and other similar services to the other party."

of proof to establish the reasonableness of the contract or arrangement shall be on the public utility. Minn. Stat. § 216B.48, subd. 3 (1990).

The Company argued that the Agreements identify intercompany service arrangements between NSP and its affiliated entities, satisfy all applicable Minnesota Statutes, provide an effective audit trail for identifying and evaluating intercompany transactions, and eliminate the potential for cross-subsidization by providing a reasonable and equitable method of accumulating and assigning costs.

Based on its review, the Department stated its belief that the Agreements are reasonable and consistent with the public interest. The Department indicated that its primary concern that NSP use appropriate accounting procedures to prevent ratepayers from subsidizing affiliates was satisfied by the Company's clear cut identification of roles, responsibilities and work tasks, and a cost accounting system that assures a proper assignment of costs to prevent any cross-subsidization of non-regulated activities by the Company's regulated ratepayers. The Department advised that the Company's filing methods should appropriately track the separate costs for personnel services exchanged under the Agreements.

After conducting its own review, the Commission accepts the Department's analysis and finds that the Company has met its burden of establishing that the contracts in question are reasonable and consistent with the public interest. Therefore, the Commission will approve those contracts.

To clarify the significance of this action, the Commission's approval renders these contracts valid and effective as of the date of this Order. However, in NSP's next rate case the Commission will review any payment or compensation under these contracts and the burden will be upon the Company to prove their reasonableness. See Minn. Stat. § 216B.48, subds. 5 and 6 (1990).

With regard to the future, the Commission will take steps to assure that NSP submits its requests for validation of the contracts that NSP enters into with these companies in timely fashion as required by Minn. Stat. § 216B.48, subd. 3 (1990). The Commission will direct NSP to obtain pre-approval of any amendment to these contracts and of any new contracts with these companies. In addition, in preparation for reviewing the costs associated with these contracts during the Company's next rate case, the Commission will require the Company to document its reasons for selecting and applying a particular allocation factor for indirect charges and to maintain accurate monthly records of all resource exchanges between NSP and the Group and its subsidiaries.

Finally, NSP will be required to confirm its verbal clarification of a statement appearing in the Petition. In its Petition, NSP stated that its new contract with NRG Thermal Corporation (NRG Thermal) will "supersede" its previously approved contract with NORENCO Corporation (now NRG Thermal). NSP has subsequently indicated that it did not intend to replace the NORENCO agreement which included specific accounting arrangements related to the High Bridge and King generating stations. Because NORENCO agreement contained valuable arrangements regarding fuel costs and incremental cost allocations, the Commission will require NSP to make a compliance filing clarifying which NORENCO agreements remain intact.

ORDER

1. The Tax Sharing Agreement that Northern States Power Company (NSP) entered into with NRG Group, Inc. (the Group) dated April 4, 1991 and the Administrative Agreements NSP entered into with the Group and with each of the Group's five subsidiaries (NRG Energy, Inc., NRG Thermal Corporation, NRG Resource Recovery, Inc., Graystone Corporation and Scoria, Incorporated) dated January 1, 1992 are hereby approved and become valid and effective as of the date of this Order.
2. NSP shall seek and obtain Commission approval of any amendments to these Agreements and of any new contract with the Group and its five subsidiaries prior to beginning to perform any such amendment or new contract.
3. NSP shall document reasons for selecting and applying a particular allocation factor for indirect charges associated with these Agreements.
4. NSP shall maintain accurate monthly records of all resource exchanges between NSP the Group and between NSP and the Group's subsidiaries.
5. Within 30 days of the date of this Order, NSP shall clarify which NORENCO agreements remain intact and supply copies of the intact agreements.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)